

## Internal Revenue Service

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Person To Contact:

, ID No.  
Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-116845-08

Date: JUNE 27, 2008

### Legend:

Decedent =

Spouse =

Son =

Country =

Will =

a =

Corporation =

Accountant =

Date 1 =

Date 2 =

Spouse's QDOT =

Individual =

Date 3 =

Date 4 =

Dear \_\_\_\_\_ :

This is in response to a letter from your authorized representative dated April 8, 2008, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make a Qualified Domestic Trust (QDOT) election under § 2056A(d) of the Internal Revenue Code as well as an extension of time to assign certain property to a QDOT.

The facts and representations submitted are summarized as follows: On Date 1, Decedent who was a United States citizen died, survived by Spouse and Son. Spouse is a citizen of Country and a lawful permanent resident of the United States. Under Decedent's Will, his a percent interest in Corporation passed outright in equal shares to Spouse and Son; the residuary estate passed outright to Spouse. The residuary estate consisted of a residence, two plats of real estate, and seven bank accounts. Son was appointed executor of the probate estate.

Son hired Accountant, a CPA, to prepare the Form 706, United States Estate (and Generation-Skipping) Tax Return, for the estate. Accountant assumed that, because Spouse was a lawful permanent resident, property passing to her from Decedent qualified for the marital deduction under § 2056(a) of the Internal Revenue Code. On the return, the estate claimed a marital deduction for the property interests passing to Spouse but did not make an election under § 2056A(d).

On Date 2, Spouse created a QDOT (Spouse's QDOT) described in § 2056A. On Date 3, Spouse irrevocably assigned to Spouse's QDOT all of the interests that passed outright to her under Will. On Date 4, Accountant filed a supplemental Form 706, making a QDOT election for Spouse's QDOT.

The estate has requested an extension of time under §§ 301.9100-1 and 301.9100-3, to assign the property interests passing to Spouse under Will to Spouse's QDOT. Estate also requests an extension of time to make a QDOT election with respect to Spouse's QDOT.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Section 2056(d)(1)(A) provides that if the surviving spouse is not a citizen of the United States, no deduction shall be allowed under § 2056(a). However, § 2056(d)(2)(A) provides that § 2056(d)(1)(A) will not apply to any property passing to the surviving spouse in a qualified domestic trust (QDOT).

Under § 2056A, in order for a trust to qualify as a QDOT: (1) the trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or domestic corporation and that no distribution other than a distribution of income may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the additional estate tax imposed by § 2056A(b)(1) on the distribution; (2) the trust must meet the requirements that are prescribed under Treasury regulations to ensure the

collection of the tax imposed by § 2056A(b); and (3) the executor must make the election prescribed by § 2056A(d) to treat the trust as QDOT.

Under § 2056(d)(2)(B) and § 20.2056A-4(b)(1) of the Estate Tax Regulations, if an interest in property passes outright from a decedent to a noncitizen surviving spouse either by testamentary bequest or devise, by operation of law, or pursuant to an annuity or other similar plan or arrangement, and such property interest otherwise qualifies for a marital deduction except that it does not pass in a QDOT, then solely for purposes of § 2056(d)(2)(A), the property is treated as passing to the surviving spouse in a QDOT if the property interest is assigned to a QDOT under an enforceable and irrevocable written assignment made on or before the date on which the return is filed and on or before the last date prescribed by law that the QDOT election may be made.

Under § 2056(d) and § 20.2056A-3(a), the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is not filed, on the first federal estate tax return filed after the due date. The election, once made, is irrevocable. No election may be made if the return is filed more than 1 year after the due date of the return.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time until 60 days after the receipt of this letter is granted to assign to Spouse's QDOT the property interests passing to Spouse under Will and to make a QDOT election with respect to Spouse's QDOT.

The election should be made on a supplemental Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, no opinion is expressed or implied concerning the federal tax consequences, under the cited provisions or under any other provisions of the Code, of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter